

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish
Policies and Cost Recovery Mechanisms for
Generation Procurement and Renewable
Resource Development.

Rulemaking 01-10-024

**ADMINISTRATIVE LAW JUDGE'S RULING
ON NOTICE OF INTENT TO CLAIM COMPENSATION**

Summary

This ruling responds to the notice of intent (NOI) to claim compensation served by Union of Concerned Scientists (UCS) on February 7, 2002 and supplemented on May 31, 2002. Due to defects in service, UCS filed a motion to consider its NOI timely and properly filed and served on July 16, 2002.

In consultation with the assigned Commissioner, I find that UCS has met the eligibility requirements of Public Utilities Code Section 1804(a), including the requirement to establish significant financial hardship, and is found eligible for compensation in this proceeding.

The finding of eligibility for compensation made in this ruling does not guarantee an award of compensation. Before a party can be awarded reasonable fees and costs of participation, it must show it made a substantial contribution to the adoption, in whole or in part, of the commission's order or decision. UCS should make an effort to see it does not duplicate other parties' efforts by taking the same approach to the same issues. Duplication may result in a reduction in the amount of compensation ultimately awarded.

NOI Requirements

This ruling addresses UCS's NOI under the requirements of the Public Utilities Code, Division 1, Part 1, Chapter 9, Article 5, Sections 1801-1804 and rules for the Intervenor Compensation Program set forth in Decision (D.) 98-04-059.¹

Timely Filing

Under Section 1804(a)(1), "(a) customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation." The prehearing conference was held January 8, 2002. On February 7, 2002, UCS served on the service list its NOI, but did not formally file the document. No protests were received. On May 31, 2002, UCS submitted supplemental information to the undersigned ALJ, but failed to serve that information on all parties.

To correct the above procedural deficiencies, UCS filed and served a motion on July 16, 2002, attaching its original NOI and the supplemental information. UCS states its failure to formally file the original NOI and to properly serve the supplemental information were the result of inexperience with, and a misreading of, the Commission's filing and service requirements. No protests were received.

UCS states it did not intend to circumvent the Commission's rules and procedures for proper filing and service or to prejudice other parties' rights. By

¹ All statutory references are to the Public Utilities Code.

its July 16 motion it has cured all procedural deficiencies. Therefore, I grant UCS's motion to consider its NOI timely and properly filed and served.

Customer Status

Pursuant to D.98-04-059, this ruling must determine whether the intervenor is a customer, as defined in Section 1802(b), and specify under which of three categories the intervenor qualifies as a customer: a participant representing consumers; a representative authorized by a customer; or a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers. (See slip op. at 28-9.) In D.98-04-059, the Commission also finds that to be eligible for compensation an intervenor must show that it will represent customer interests that would otherwise be underrepresented. (See Finding of Fact 13, slip op. at 83.)

UCS meets the definition under Section 1802(b) of a customer eligible to claim intervenor compensation under the third category, that of a nonprofit environmental organization authorized under its bylaws to represent the interests of its members, all of whom in California are residential customers of PG&E, SDG&E, or SCE. A copy of UCS's Articles of Incorporation and bylaws were attached to its May 31st letter. UCS states it is the only nonprofit, environmental intervenor focused exclusively in this proceeding on the importance of renewable energy for public health, energy security and energy diversity. It states it will work with other environmental intervenors to avoid duplication in its efforts and arguments.

Financial Hardship

Only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation.

Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in the NOI and this showing can be made on the merits of the pleading or through a rebuttable presumption.

UCS addresses this requirement in its May 31 supplemental letter by stating that the economic interests of its individual members, all of whom are residential customers, are small in comparison to the costs of effective participation in this rulemaking. It estimates its members' annual electric bills to be approximately \$1,200 per year, which is a tiny fraction of the costs of UCS's participation in this proceeding.

Based on the above assertion, I find UCS meets the "significant financial hardship" requirement of Section 1802(g).

Planned Participation and Estimated Compensation Request

Section 1804(a)(2)(A)(i) requires the NOI to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicated and Section 1804(a)(2)(A)(ii) requires the NOI to include an itemized estimate of the compensation the customer expects to receive.

In its February 7, 2002 NOI, UCS states it intends to submit testimony, participate in any hearings that are conducted, and submit briefs and comments as required.

UCS states that due to the uncertain timing and scope of the proceeding, its budget estimates are approximate and may be revised substantially as the proceeding progresses. With this caveat, it submits a total budget estimate of \$95,625, comprised of the following items. It estimates it will devote roughly 200 hours of UCS staff time (175 hours of attorney Julia Levin's time at \$250 per hour and 25 hours of Clean Energy Program Director Alan Noguee's time at \$275

per hour). UCS will also engage an outside expert(s) to help prepare its testimony and act as expert witnesses. It estimates it will need 150 hours of an expert economist (at roughly \$300 per hour).

UCS states the reasonableness of the hourly rate requested for its representatives and expert witnesses will be addressed in its Request for Compensation when it is filed.

Therefore, **IT IS RULED**, that:

1. Pursuant to its July 16, 2002 motion of the Union of Concerned Scientists' (UCS's), its February 7, 2002 notice of intent (NOI) is considered timely and properly filed and served.
2. UCS is a customer as that term is defined in Section 1802(b) as it has shown that it is an organization that is authorized by its Articles of Incorporation to represent the interest of residential ratepayers.
3. UCS has met the eligibility requirements of Section 1804(a), including the requirement to establish significant financial hardship, and is found eligible for compensation in this proceeding.
4. A finding of eligibility in no way assures compensation.
5. UCS shall make every effort to reduce duplication of contribution.
6. UCS shall provide time records, expense records, and justification for hourly rates in its request for an award of compensation.

Dated August 20, 2002, at San Francisco, California.

/s/ CHRISTINE M. WALWYN
Christine M. Walwyn
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on Notice of Intent to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated August 20, 2002, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.